

FOURTH OF JULY ORATION



THURSDAY, JULY 4
1912

BY

JOSEPH C. PELLETIER

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Joseph C. Kellogg

ORATION

RESPECT FOR THE LAW


BY

JOSEPH C. PELLETIER *A*

DELIVERED BEFORE THE CITY GOVERNMENT AND CITIZENS OF BOSTON
IN FANEUIL HALL, ON THE ONE HUNDRED AND THIRTY-SIXTH
ANNIVERSARY OF THE DECLARATION OF INDEPENDENCE
OF THESE UNITED STATES, JULY 4, 1912



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RESPECT FOR THE LAW.

FOURTH OF JULY ORATION, 1912

BY JOSEPH C. PELLETIER.

Mr. Mayor and Fellow Citizens:

“Yesterday the greatest question was decided that was ever debated in America, and greater perhaps never was nor will be decided among men. A resolution was passed without one dissenting colony that these United States are and of right ought to be free and independent states.

“I am apt to believe that it will be celebrated by succeeding generations as the great anniversary festival. It ought to be commemorated as the day of deliverance by solemn act of devotion to God Almighty.”

These words were written to his wife by John Adams, who was known as the Colossus of independence and the pillar of its support on the floor of Congress; and we gather here to-day in patriotic fulfillment of his prophecy and in consecration anew of the most glorious day in the calendar of the Republic.

Throughout this great nation on this the one hundred and thirty-sixth anniversary of that ennobling and inspiring Declaration of Independ-

ence that meant so much for humanity and the world; in every town and hamlet of this great country to-day, men are gathered together with patriotic impulse to retell the story of that Declaration and to recite again its blessings to the men and women of all nations and of all climes.

One hundred and thirty-six years ago!—less than the space of two lives of the allotted three score and ten—and yet how much of accomplishment—what tremendous progress—what inestimable benefits to the present, what illimitable hopes for the future!

In no place more sanctified by an early dedication and continuous contributions to the cause of liberty, in no spot more hallowed by the glorious story of our nation's birth and development is this day being celebrated than here in Boston—here in the Cradle of Liberty.

We possess the heritage of liberty common to all citizens, yet we cherish a special blessing in our local history intensified by the neighborhood of Concord and Lexington and Bunker Hill—in our traditions breathing the spirit of Adams and Hancock and Otis, and in our hope of achievement reflecting the wisdom and courage of the statesmen and heroes who without count of cost unfalteringly sacrificed even life itself in the cause of liberty that our great Republic might live and flourish.

The sounds of industry are hushed to-day, the busy din of workshop and mart ceases, silence descends upon the turmoil of business as the nation pauses in contemplative survey of the past and present, and seeks confidently to peer behind the veil that obscures the future. The passionate rush and strife of daily existence are stilled in meditative regard of the day's significance. On the heights of national pride and power we take our bearings, and measure our possible deflection from the safe lines laid down by the Fathers and expressed in their Declaration and in the Constitution.

In the throes of a great nation-wide excitement incident to a national election, we are in danger of the pessimist and the demagogue, with their cries of impending destruction and desolation based on the worst examples of our present-day civilization, "sweeping inferences from exceptional occurrences," instances that they would use as reason for overthrowing the Constitution, tearing down the safeguards raised by the Fathers, and making a radical departure from the scheme of government contemplated and framed in our beginning and administered with such beneficent results to humanity during these one hundred and thirty-six years.

In the consideration of the threatened dangers and suggested remedies we should not forget that

“Liberty is justice secured.” It is justice secured not for classes, not for some, not for the majority alone — but justice for all. The strength of our Republic must ever rest upon the fact that the majority has imposed obligations upon itself that the minority may enjoy equal rights and privileges. It is “voluntary obedience to self-imposed and self-enforced law.”

Law has been defined in its most general and comprehensive sense as a rule of action framed to protect and promote the welfare of families and individuals and to safeguard society.

A sluggish mental assent to the established order of things, to God-given law and man-declared laws means indifferentism, which bespeaks failure when the crisis comes and holds men and people below the mediocre in achievement, both moral and material.

As children of this mighty Republic we are at once lawmakers, and subject to the laws so made. By our votes we choose those who are to guide the Ship of State, and we remain subject to them in their administration of the affairs of government.

Is it not strange how often outward form and shallow habit are accepted as realities?

Not in a waving of the Stars and Stripes, nor in confessing the Constitution do we necessarily discover patriotism. In its essentials patriotism is rather a consistent reverence and respect for duly

constituted civil authority, for law and order.
Obedience is the child of love and respect; it is the devotion of service.

All just laws must look to man and manhood and regard the citizen as the creature of God and not of the state, with free will, but bound by the laws of truth and justice.

From God come the inalienable rights of man, and yet there is danger in a republic that men may come to regard the laws as entirely their own and those placed in authority as their creatures rather than the instrumentalities of an authority which comes from on High.

There is always danger that men with equal rights to participate in government may come to look lightly on the laws made by themselves or their neighbors. The law seems to lose its majesty by nearness of view and its evasion is likely to become a trifling matter if detection can only be avoided.

“What,” says Burke, “is liberty without virtue and order.”

True, indeed, liberty without virtue and order becomes license, and license is the gateway to crime.

“Liberty is a great and enlarged virtue and not a sordid, selfish and illiberal vice.”

Almost daily we are confronted by shocking evidences of lawlessness and dishonesty, public

and private; crimes of passion and violence, crimes of cunning and ingenuity still throw a black shadow across the path of advancing civilization. A despicable sentimentality, born of impulse and emotional obliquity, seeks to render null the processes of law where the crime and the criminal are momentarily lifted out of the commonplace by the ogre of sensationalism. The foul blot of suicide no longer excites horror or pity. The thief in high places conceals his offense under a mask of refinement and education as he consorts with virtue and decency. The foundation of the nation — the family — is assailed by that enemy of morality and civil stability, divorce.

Some men, apprehensive of the future, have patiently set about to effect a cure or work an improvement, at least, by making a determined effort to awaken the civic conscience of the people and bring home to them a sense of their responsibility to the state and to themselves.

To gain this laudable end they would expose to public view the violations of law and crimes against citizenship in the hope that the horror of it all may stimulate the virtue of the people.

When human frailty is laid bare, however, the reason must be written down as lack of respect for the law, and the realization comes home that beneath and behind a pure government must be a virtuous people.

We cannot recall too often, then, those strong words of Washington in his Farewell Address:

“Of all the dispositions and habits which lead to political prosperity religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who would labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician equally with the pious man ought to respect and cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked, where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.”

It was De Tocqueville who said:

“You may talk of the people and their majesty, but where there is no respect for God, can there be much for man? You may talk of the supremacy of the ballot, respect for order, denounce riot, secession,—unless religion is the first link, all is vain.”

↓ Irreverence, with its brood of socialism, anarchy, divorce and other civic and moral disorders, follows most naturally and inevitably upon the denial of the laws of God and the consequent failure conscientiously to appreciate one's duty to the state and his fellow man.

Ruthless disregard of the solemn promises publicly made to the people and faithlessness to the oath of office by men in public positions are characteristics all too common. In the courts of justice we are frequently struck by the violation by so-called honest men of the oath administered to them; the oath, "the link that binds the soul of the creature to the footstool of the Creator." Men in the jury box, in the exercise of the high privilege and duty of citizenship, almost daily insult duly constituted authority and citizenship itself by disregarding their oath-bound duty and voting according to prejudice or price. Too frequently in the courts of justice witnesses are found who outrage the law of the land and the heritage of free men by false testimony.

Hideous as these weaknesses are they point not to a defect in our form of government or system of laws; rather do they relate back to the individual whom no law can make virtuous, as Washington said, without religion and morality.

To the serious minded the increasing number of non-attendants at church and the consequent grow-

ing emptiness of the meeting-houses of religion might well cause apprehension more fearful than many of the ills so frequently adverted to in these days.

However, we are not to become pessimists or alarmists. Optimism must be our watchword. Ever it must be in the devotion of service, in respect for the law, to build and to accomplish and to be hopeful even amidst the failures of men and the mistakes of a government of the people by the people.

To-day we are fighting the battles of peace and her victories wait upon our devotion to the highest civic ideals. As we recall the glorious struggles of the past in war and in peace we must find ourselves fortified to continue the struggle for the betterment of men. We must redeem in the fullest accomplishment of a government by the people the awful debt of treasure and life suffered by the men of 1775 and 1861. True to the best traditions of the past, let it be our ambition to frame even higher standards for the future.

It is comforting to know that all the complaints at present laid upon our system of laws have been urged before. It was in 1860, in a debate in the House of Commons, on a question affecting the extension of the elective franchise in England, that the United States was held up as an awful example of the danger of entrusting a ballot to the

people. In the course of that debate Earl Grey stated that in the United States, since the Revolutionary period and by the undue extension of the right of suffrage, our elections had become a mockery, our Legislatures venal, our courts tainted with party spirit, our laws "cobwebs," which the rich and poor could alike break through and the country and the government in all its branches given over to corruption, violence and a general disregard of public morality.

These words have a strangely familiar sound in these our days, more than fifty years after their utterance. It would almost seem that they were spoken yesterday.

Referring to this arraignment Edward Everett said:

"If these opinions are well founded, then certainly we labor under a great delusion in celebrating the National Anniversary. Instead of joyous chimes and merry peals, responding to the triumphant salvos which ushered in the day, the Fourth of July ought rather to be commemorated by funeral bells, and minute guns, and dead marches; and we, instead of assembling in the festal hall to congratulate each other on its happy return, should have been better found in sackcloth and ashes in the house of penitence and prayer."

Rather than my feeble words I wish I might read to you Everett's answer to those charges; that we might follow his inquiry "whether the

salutary checks of our system formerly existing have been swept away and our experiment of elective self-government has consequently become a failure; whether, in a word, the great design of Providence in the discovery, settlement, political independence and national growth of the United States has been prematurely arrested by our perversity; or whether on the contrary that design is not — with those vicissitudes and drawbacks and human infirmities of character and uncertainties of fortune which beset alike the individual man and the societies of men in the Old World and the new — in a train of satisfactory, hopeful, nay, triumphant and glorious fulfillment.”

His answer to those charges of fifty years ago is the answer that we make to-day to similar charges. These past fifty years lend added strength to the refutation and fill us with hope and confidence that our deflection from the path of righteousness in civic affairs has been small indeed, and due to humanity's weakness in public as well as in private affairs, merely the “fluctuations ever visible in the march of human affairs.”

Ruskin tells us that the desideratum is “not equality but a frank recognition of every betterness,” and so it becomes our duty to make and live and labor for a betterment in the conditions of our citizens and an acknowledgment of every man's goodness.

While not peculiar to our country by any means, the frequent differences between labor and capital, the consequent loss to both, the bitterness engendered and the generally bad effect upon the community attendant upon every such struggle cannot fail to make us pause and ask ourselves whether some remedy cannot be had, some preventive found that will make less frequent, if not altogether impossible, such devastating conflicts.

The sad spectacle during the year of one of our great cities, one of the greatest manufacturing centers of the country, if not of the world, held in order for weeks by the militia of the state cannot fail to impress every citizen with the importance of facing the facts and seeking a remedy.

It may be that in a law compelling arbitration the solution will be found, but from the parties themselves would better come the adjustment.

Laws, after all, cannot in their essence confer rights; it were better to say that they simply declare and conserve to men certain inalienable rights, recognizing that man has duties to perform, sacrifices to make for the state in order that society may be safeguarded and the security and happiness of the individual assured.

The strength of the Republic depends upon the integrity of her citizens, and respect for law and order and for one another is the only sure guaranty for the perpetuation of our free institutions.

All good citizens must stand for the living wage dictated by justice and charity. The laborer is not a mere machine useful only to produce a given output; he is a man, a fellow human-being entitled to the respect and regard and protection of his employer.

The employee, on the other hand, must recognize his duty to give conscientious labor for fair wages.

There is no room in this Republic for any man or class of men who would insist upon the most for the least in the field of labor. Fairness, justice and citizenship must be the rule and standard if peace is to reign and happiness prevail.

We have yet much to accomplish for the amelioration of social conditions and the betterment of man when it can be said that several members of a family toiling through the usual hours of labor can jointly barely secure the merest necessities of life.

This Commonwealth has established a Free Employment Bureau which has passed out of the experimental stage and must claim our best efforts and most generous aid while there are those able and willing to work who are unable to find employment.

“The rights of man” and “majesty of the people” are “as sounding brass or a tinkling cymbal” if that chiefest right and greatest majesty of man is denied him or minimized in

the least,—the inherent God-given right and duty to gain his livelihood in honorable employment, to support and maintain his family in comfort and decency.

It is hardly possible for us to analyze the state of mind of the man so situated. His attitude towards other men more fortunate, towards the affluent, his attitude towards government, the haven, as he has been told, of the weak and oppressed of all nations, can hardly be pictured by those who have not suffered as he has.

Yet it cannot be gainsaid that such pitiable conditions do not lend to the upbuilding of good citizens. Mentally and morally there is a handicap; physically there is not an equal chance.

If these conditions exist in many cities or manufacturing centers we are bound to lend a helping hand; we are without excuse in not agitating such actual problems until by law or through conscientious obligation those primarily responsible have made amends.

These days of great wealth, of lavish display, of public exhibition of money and its power are not calculated to appease the hunger of the poor or to smooth the rough path of the unfortunate.

The mere contemplation of the money invested in pleasure-seeking is theme sufficient upon which to build up socialism and anarchy.

The right theory of private ownership which it

is sought to overturn cannot be sustained by denying the poor and lowly their only inherent property right,— the right to an honest wage for honest labor.

We cannot hope to stem the rising power of socialism and its destructive agencies merely by seeking protection for physical property and insisting upon the right of ownership, if we stand at the bar to plead the cause with unclean hands, with unfair spoils and profits to our credit.

In denying our fellowmen the right to subsist decently we are loosening the real keystone of the social fabric and forging strongest arms for the forces of disorder and anarchy.

What hypocrisy to count our progress and social betterment, to boast our pure food laws and our sanitary ordinances when thousands of people such as I have described are to be found in all our large centers!

What avail the elaborate school facilities, magnificent park systems, fine public buildings, libraries and all that helps to make the "city beautiful," if men and women and children have not enough to eat, nor enough to wear, if they must live and sleep and work with gaunt poverty and starvation as their constant companions?

We cannot escape this problem by deploring past conditions or present difficulties. It is a real, living, growing issue of daily existence that

will not cure itself, nor improve at all without an insistent active and practical campaign.

What of the merchant-princes, prodigal in their private and public charities, patrons of education, of art, of science, in whose stores and factories young girls are working from morning until night for six days a week for a mere pittance?

These are the children of the poor, who once past the schooling age must support themselves and assist to support the family at home.

Know you these conditions? Have you ever thought of what it all means? The wrecking of souls and bodies; the crushing of youthful ambition and courage; the grinding down into machine-parts of these fair children of the poor!

And where lies the remedy and what the means to correct this awful condition?

It is said that wild horses upon being attacked by the wolves form a ring around the mares and young, presenting a battery of heels to the enemy. We all know the infinite care and solicitude of the mother bird for its young and helpless fledgling. Everywhere in nature is found this same spirit of helpfulness to the weak.

We willingly support the pauper at public expense; gladly we care for the sick in our hospitals, but alas, how little we are doing for the healthy, the able, the willing, who want no charity, who seek only the opportunity to gain a living in exchange for their labor.

Let us broaden this great work — let us magnify our charity — until it shall come to mean not alone the giving of money, but the giving of opportunity, the willing grant of rights to all, that men may live their lives freely and fairly even though by the sweat of their brow.

Humanity is fast being written into our laws and the law of vengeance and retaliation is fast passing from our midst.

Men are coming to see that the lawbreaker is not of necessity like the savage beast which must be confined behind iron bars to protect the community.

Our laws to-day are seeking the means to search the very soul of him accused of crime, in order to determine whether circumstance, environment, weakness, or vicious wilful transgression is the cause of his wrongdoing. And yet we are only at the threshold of this new thought in the treatment of lawbreakers.

The state seeks no vengeance; her one solicitude is for the safety of society. If it becomes necessary in the interests of good order to imprison or fine, the imposition of sentence brings its own punishment of course, but the state in the humanity of the present day advancement seeks not to punish, not to harm the individual, but straightway sets out to reform, to reorganize a fallen manhood, to restore to society a useful man where before there lived a menace.

The rack, the stocks, the lash, the horrors of subterranean dungeons, starvation — all these evidences of a state which sought vengeance on the individual because he had invaded the sanctity of her laws — are passed and gone forever.

To-day kindness and mercy are paramount. "The noblest work of God" is seen even behind the smut and grime and horror of blackest transgression of the laws, and salvation of the man, his restoration to society as a useful member, is the sole thought to-day in the administration of our criminal laws.

But yesterday the felon went crushed in spirit, beaten in body, hopeless in soul to the grim confines of the penitentiary, perhaps to emerge a marked man, branded with society's scarlet scar of disgrace, a hunted and hated man forever after,— or perhaps never again to come forth, but wasting away in want and discomfort, doomed to die the death of a neglected outcast.

And shall it be that the law which has so changed its viewpoint of the lawbreaker, the enemy or at least the danger to society — that that law shall not see the want and misery of the poor, shall not make provision for the upbuilding and life-saving of the men and women and children who must toil for their daily bread?

Must men become criminals or paupers before our laws shall hold out to them a chance to live by their own hands?

A hundred years ago the present attitude towards those found guilty of crime would have been scouted as the wild dream of an idealist or crazy notion of a fool! To-day we are looking forward to greater changes and more radical improvements in their treatment.

It may be paternalism, it may be anything that harsh, cold, soulless men may call it, but the demand that the state shall exact of employers fair, decent wages for the employees will not down and must be settled right.

The state to-day has forced upon the unwilling employer many regulations as to hours of employment, ventilation and sanitation.

The law that can enforce decent quarters for the employee should go further and insist that he shall have a fair living wage.

This is not socialism; this is democracy and decency and freedom that alone can save us from the socialist.

It is not deprivation of property without due process, it may rather be described as the declaration and guaranty of vested rights always existing by divine right and denied by selfishness and ignorance. It is because we have too little or no appreciation or respect for the divine natural laws that man must write them in his book of laws and hold them before all men for observance.

But let us turn from the consideration of these social problems to one of the gravest questions

that has been set before our people since the Civil War. It is a question that goes further than the matter of individual rights and social reforms and strikes its roots deep in the very essence of our existence as a Republic of laws under a written Constitution.

I refer to the new doctrine of recall of judges and recall of judicial decisions.

While it is true that the recall of judges has already been adopted in some states and its dangerous effects cannot therefore be said to be immediately fatal to our institutions, nevertheless, its certain effect as amplified and simplified and made familiar to the people cannot fail to be a constant, growing and vital menace to the fair and impartial administration of justice.

The authority is asked to lay before the people for their decision the question whether a given judge shall be recalled or retired from the bench on account of some decision he has made.

As expressed by its leading advocate:

—“either the recall will have to be adopted or else it will have to be made much easier than it is now to get rid not merely of a bad judge, but of a judge who, however virtuous, has grown so out of touch with social needs and facts that he is unfit longer to render good service on the bench.”

It matters not that he has decided a cause according to precedent and in agreement with

the constitutional limitations — if his decision is disliked by you or me, we may go forth and upon obtaining a certain number of signatures drag this judge, virtuous though he is known to be, drag him from the bench, force him onto the public platform in a campaign involving his honor and his judicial position, bring his case to the polls and try him by popular ballot!

What a monstrous proposal in a land of laws and liberty! As well abolish our courts and try our issues in civil cases at the polls, try our law-breakers at the polls!

How widely different from the orderly procedure in this Commonwealth, where a judge may be removed only after a hearing before the chosen representatives of the people, guaranteeing a fair presentation of the case upon both sides.

Nor is the objection to recall of judges or decisions a denial of the people's rights and republican government, nor yet an evidence of distrust in all the people — no, rather is it an appeal to a government of law and order under a Constitution guaranteeing certain rights and equal rights to all.

President Butler, of Columbia University, in an address at St. Louis, speaking of the recall of judges, said:

“It is an outrage of the first magnitude! It is said, ‘Are not the judges the servants of the

people? Do not the people choose them directly or indirectly, and should not the people be able to terminate their services at will?' To these questions I answer flatly, No! The judges stand in a wholly different relation to the people from executive and legislative officials. The judges are primarily the servants, not of the people, but of the law. It is their duty to interpret the law as it is and to hold the law-making bodies to their Constitutional limitations, not to express their own personal opinions on matters of public policy. It is true that the people make the law, but they do not make it all at once. Our system of common law has come down to us from ancient days, slowly broadening from precedent to precedent. It is not a dead or fixed thing. It is capable of movement, of life, and of adaptation to changing conditions. But it must be changed and adapted by reasonable and legal means and methods, and not by shouting or tumult."

We cannot and must not forget that last article of our Bill of Rights in this Commonwealth:

"ARTICLE 30. In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; *to the end it may be a government of laws and not of men.*"

If our judges are to be subject to recall, will it not inevitably result that strong and able lawyers would soon come to refuse to serve on the bench when the honest opinion of a trained legal mind may bring down upon one the disgrace and humiliation of a recall by the people who, disliking his judicial utterance and regardless of its soundness, would punish him by returning him to private life, just and learned and virtuous though he may have been.

The recall of decisions is, however, of far greater importance than the recall of judges — the latter being after all a matter of “expediency,” as its chief advocate says, but the former proposes a direct amendment to the Constitution of the United States and those of the several states by making the people a part of the judicial department of government.

We are asked to abolish the principle so expressly set forth in the Constitution of three divisions of government, executive, legislative, and judicial.

In specious argument it is urged that the people, under God, made the Constitution; that it is for them and theirs, and hence if a judicial decision suits them not, they are to express the law as they would have it, thus superseding or recalling the disliked decision of the courts.

It has been urged by some that the recall of decisions is intended merely for cases arising

within a state and involving a decision of constitutionality of a law by reason of its depriving persons of property or liberty "without due process of law," that is, laws involving the so-called police power of the state.

If this contention be true and the intention is only to apply the recall to decisions affecting "due process laws," pray who shall say that it will not be further extended? What guaranty that it shall not in the near future be extended to all decisions?

Assuming, however, that only such decisions are to become the subject of recall a very considerable field will have been covered.

Justice Holmes in *Noble State Bank v. Haskell* (219 U. S. 104, 111), speaking for the Supreme Court, says:

"The police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality of strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

Thus, even in the viewpoint of the timid advocates of recall we come to a vast and growing branch of the law involving constant judicial determinations and the people are to be made judges that they may have just what they want when and as they want it, regardless of constitutions and laws.

Law as a science, law as a written exposition of truths justified by the ages, law as a tradition of eternal principles is to reign no more in fair Columbia; dethroned and disgraced, the blind goddess shall be driven from the courts of justice to the dungeon and the rack, and each man shall be the law, and all men shall be the law, and justice shall be called chaos!

Ah, listen to our great Chief Justice Shaw (*Com. v Anthes*, 5 Gray, 185)! In speaking of the three great powers, executive, legislative and judicial and the distinction ever to be preserved among them, that we may be a government of laws, he says:

“It declares the end of all good government to depend on the honest execution of good laws. In its application to judicial power it intimates that the judicial powers when it shall duly and deliberately pronounce its behests, shall be, as nearly as consistently with human passions and infirmities it can be, the pure voice of the law. The security of the public, in the right and pure administration of the law, punishing offences and the security and protection of individuals rightfully or wrongfully accused, are made to depend, not upon the supposed interests, proclivities, or even honest and well-founded opinions of the men who happen in any department to be the organs through which its behests are uttered, but the voice of the law.”

And again:

“The founders of our Constitution understood what every reflecting person must understand from the nature of the law, in its fundamental principles and in its comprehensive details, that it is a science, requiring a long course of preparatory training, of profound study and active practice, to be expected of no one who has not dedicated his life to its pursuit; they well understood that no safe system of jurisprudence could be established, that no judiciary department of government could be constituted without bringing into its service jurists thus trained and qualified.”

But wide as its range may be and complicated as it is, the science of law shall be administered by all the people, the art of law shall be the people's will!

And we who would offer objection to this radical change and subversal of the scheme of government laid down from the beginning, and better still, practised with such glorious results to humanity from the first days of the Republic — we, forsooth, are to be branded as false to the people, unwilling to have the people rule, believing in an aristocracy of brains and ability — we are to be stigmatized and abused out of our very citizenship!

We must not let these thoughts frighten or deter us from our plain duty for “Far above any flickering light or battle-lantern of party is the everlasting Truth, in whose beams are the duties of men.”

Are we faithless to the rule of the people when we refer only to trained bodies of men, our educational system, and follow their advice?

Is it a lack of confidence in the honesty and integrity of the masses that we call to the bed of suffering and pain only certain men trained in the science of medicine and carry out their instructions to the letter?

Is it an insult to the people to deny that, without special training, they are incapable of teaching the young, of healing the sick, of construing laws?

And what are we to say in the case of a man accused of murder and found guilty, when the popular sentiment feels that the verdict is unjust? Are we not to have a judgment by the people at the polls? And if a judgment at the polls in the case of a murder, why not in case of any felony, or even misdemeanor? We are told that the people are competent and trustworthy to construe a constitution; why not to pass upon the facts and law in a criminal case?

But the answer comes back, the jury are the people, the people through the jury have acted upon the case of the criminal and found him guilty! Ah, yes, the jury are the people because it is so ordained by constitutional provision — but so, too, is the court acting for the people, by like constitutional provision.

It must be apparent that once granting the fairness and wisdom of a recall of judicial decisions,

we must inevitably come to a review of all decisions by the people. We come to a pure democracy without a representative form of government — written laws become valueless, established principles are overthrown and government grows into present popular fancy which spells early destruction.

We cannot in considering this question afford to forget that judges and courts are not, were not intended to be, and can never be, under our present form of government, purveyors to popular fancy, leaders in needed reforms, advocates of special theories.

They are to expound the law as they find it, having in mind always, of course, the people and the civilization for whom the law is intended. Theirs is to state the law as it is even although it be not to their liking, and to interpret it in all honesty and fairness as it is, not as they would have it.

One would think from the arguments advanced in favor of the recall that we were powerless to change existing laws or amend our present constitution. If a law is unpopular or impracticable the remedy is at hand by repeal or amendment — not by abuse of the judicial decision or the official interpreter of the law.

The question must come to our lips — are we really being badly misled, mistreated, deceived by the courts? Is the course of justice running smooth

or has it taken to a tortuous route of indecision, infidelity and ruthless disregard of the people's rights and privileges?

It cannot be denied that here and there throughout the country, amid the thousands of final decisions by courts of last resort, of which hundreds are of the broadest and most far-reaching effect, there have been decisions that seem to have been extreme and which tended to arouse the resentment of the people. But such has ever been the case, such would be the result if the people at the polls decided judicial questions. It is the common weakness of erring humanity.

It is only too true that all through our system of government, as in private affairs, men will make mistakes of judgment that may be expensive and hurtful to somebody and yet we do not condemn the whole system or business when such a thing happens.

We cannot have respect for the law if the judiciary is to be made the kicking post for dissatisfied litigants and judicial decisions overturned by those unskilled and untrained in the science of the law.

Hamilton said:

“For I agree that there is no liberty where the power of judging be not separate from the legislative and executive powers . . . the complete independence of the courts of justice is peculiarly essen-

tial in a limited Constitution . . . limitations of this kind can be preserved in practice no other way than through the medium of courts of justice whose duty it must be to declare all acts contrary to the commands of the Constitution void."

It was Adams who said: "Although there may be unjust and unequal laws, obedience to which would be incompatible with liberty, yet no man will contend that a nation can be free that is not governed by fixed laws. All other government than that of permanent known laws is the government of men, will and pleasure, whether it be exercised by one, a few, or many." "Well ordered governments were those where laws prevailed. Harrington says: 'Government *de jure*, or according to ancient prudence, is an act whereby a civil society of men is instituted and preserved upon the foundation of common interest, or to follow Aristotle and Livy, it is an empire of laws and not of men.' The great question therefore is what combination of powers in society or what form of government will compel the formation, impartial execution and faithful interpretation of good and equal laws, so that the citizens may constantly enjoy the benefit of them and may be sure of their continuance."

Let us then in the absence of a real weakness in our present judicial system, yes, in acknowledgment of the strength and purity of our present judicial system, let us, I say, stand firm to the

principles of a republican form of government with its three divisions of power.

It is not always progress to destroy; it is not advancement to be rash; it is not liberty to be lawless.

There can be and ever shall be a progress along safe lines; a progress that spells improvement; a progress based on the Constitution and law and order.

Radicalism, sensationalism and their inevitable result, destruction, come forth in times of great national excitement and we must ever be on our guard not to be led astray by appeals to passion and prejudice.

We have a duty as citizens to reaffirm and declare as often as need be the undying principles of our democracy in this Republic.

Declaration of principles, however, and affirmation of our loyalty count for little unless we bring to our duties as citizens the fullest realization of the importance of the trust reposed in us for the benefit of future generations.

Lamentations and criticisms without hopeful remedy and sane recommendation avail not at all. Victory to-day, as in the past, is not to the sluggard, the pessimist, the weakling, but to the active, the hopeful and the strong.

Hopefulness, tenacity of principle, steadfastness are the characteristics of good citizenship to-day as ever.

It was Burke who said that the first duty of a statesman is to learn the temper of the people among whom he lives.

This does not mean, however, that the statesman is to create that temper, to sow dissension, to create unrest.

True it is that there are many economic and social problems to be solved, and solved quickly, in the interests of the people.

We cannot claim perfection, and never shall. The millennium is not yet at hand and Utopia is still an undiscovered country!

We can, however, each of us do our share. It may be that we cannot be principals in the solution of some of the vital social problems of the day; it may be that to us shall come no active part in the economic reforms which are pressing for solution. But surely to each of us comes the loud call to a militant citizenship which shall first of all make itself apparent by our respect for the law, which is the first word in good citizenship. For respect means devotion and devotion means sacrifice and out of sacrifice grows perfection.

As that great American citizen, Cardinal Gibbons, recently said: "No citizen should be a drone in the social beehive. No man among you should be an indifferent spectator of the moral, political and economic questions which affect the welfare of the Commonwealth."

We are told that Magna Charta was ratified "no less than two and thirty different times in succeeding reigns, on occasion of every extraordinary grant from the subjects or an unusual weakness of the crown."

Let us then with Burke "bind up the constitution of our country with our dearest domestic ties, adopting our fundamental laws into the bosom of our family affections; keeping inseparable, and cherishing with the warmth of all their combined and mutually reflected charities, our hearths, our sepulchres and our altars."

Experience tells us that in defeat victory is oft concealed and that out of failure success may oftentimes spring.

As we look back upon the struggles of the past, the first great struggle against tyranny and oppression, the awful struggle of fifty years ago between brothers, that all men might be held equal before the law, we can take courage and strength. These examples prove to us the devotion of service and sacrifice for a principle. We know that a just cause, a holy cause, though won in the travail and sweat and horror of war, is dear to the heart of man, and must ever claim his very life in its protection.

On all of us rests the duty of true citizenship, the fulfillment of the freeman's oath to uphold the law, and honest effort under that oath brings the

devotion and service and sacrifice that go to make the best citizens and the ideal government.

Valiant in peace as in war, efficient in the affairs of men as on the field of battle, we must keep unsullied the white flag of peace and lend all aid to the hosts of men in the struggles of trade and in intellectual pursuits and in civic duty of highest type.

“He who is conscious of having deserved well of the Commonwealth, who covets no vain celebrity, and disdains the success of a day for real glory, he who is determined to tell the truth, independent of the fluctuating waves of public opinion, bears within himself his own reward.”

Such men are and must ever be the protection of society, more precious far than golden treasure and the serried hosts of armed men,—for they live the life of peace, of hope, of progress to better things; they bring virtue and order to the state that its days may be long and its achievements blessed.

Respect for the law is obedience to the law. The constitutional guaranties of the organic law of the nation afford protection to the weak and the powerless against the tyranny of the strong and the powerful.

In the years to come laws framed in the spirit of righteousness, and respect for those laws, will still keep this Republic of ours in the vanguard of the army of civilization and human progress. In the

perpetual expression of the divine models thundered from Sinai and in the enactment and observance of beneficent laws inspired in the justice and kindness of the greatest Reformer in the history of the world I see the true destiny of our country. Under laws granting no privilege to the few and withholding no protection from the many I see the triumphant march of the nation. In that future the oppressed seek not in vain for relief, the weak are not the victims of the strong, the rich and the powerful crush not the poor and lowly, the shackles of industrial slavery no longer chain the laborer to unrequited toil. By the benign alchemy of gradual social reform, the aristocracy of wealth, of education, of power, and the despotism of necessity and ignorance shall become transmuted into the enlightened Republic of men guided and safeguarded by law, and everlastingly secure in their liberties because of law!

A LIST
OF
BOSTON MUNICIPAL ORATORS.

By C. W. ERNST.

BOSTON ORATORS

APPOINTED BY THE MUNICIPAL AUTHORITIES.

For the Anniversary of the Boston Massacre, March 5, 1770.

NOTE.—The Fifth-of-March orations were published in handsome quarto editions, now very scarce; also collected in book form in 1785, and again in 1807. The oration of 1776 was delivered in Watertown.

1771. — LOVELL, JAMES.
1772. — WARREN, JOSEPH.²
1773. — CHURCH, BENJAMIN.^b
1774. — HANCOCK, JOHN.^{a,2}
1775. — WARREN, JOSEPH.
1776. — THACHER, PETER.
1777. — HICHBORN, BENJAMIN.
1778. — AUSTIN, JONATHAN WILLIAMS.
1779. — TUDOR, WILLIAM.
1780. — MASON, JONATHAN, JUN.
1781. — DAWES, THOMAS, JUN.
1782. — MINOT, GEORGE RICHARDS.
1783. — WELSH, THOMAS.
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For the Anniversary of National Independence, July 4, 1776.

NOTE.—A collected edition, or a full collection, of these orations has not been made. For the names of the orators, as officially printed on the title pages of the orations, see the Municipal Register of 1890.

1783. — WARREN, JOHN.¹
1784. — HICHBORN, BENJAMIN.
1785. — GARDNER, JOHN.
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a Reprinted in Newport, R. I., 1774, 8vo., 19 pp.

b A third edition was published in 1773.

¹ Reprinted in Warren's Life. The orations of 1783 to 1786 were published in large quarto; the oration of 1787 appeared in octavo; the oration of 1788 was printed in small quarto; all succeeding orations appeared in octavo, with the exceptions stated under 1863 and 1876.

1786. — AUSTIN, JONATHAN LORING.
 1787. — DAWES, THOMAS, JUN.
 1788. — OTIS, HARRISON GRAY.
 1789. — STILLMAN, SAMUEL.
 1790. — GRAY, EDWARD.
 1791. — CRAFTS, THOMAS, JUN.
 1792. — BLAKE, JOSEPH, JUN.²
 1793. — ADAMS, JOHN QUINCY.²
 1794. — PHILLIPS, JOHN.
 1795. — BLAKE, GEORGE.
 1796. — LATHROP, JOHN, JUN.
 1797. — CALLENDER, JOHN.
 1798. — QUINCY, JOSIAH.^{2, 3}
 1799. — LOWELL, JOHN, JUN.²
 1800. — HALL, JOSEPH.
 1801. — PAINE, CHARLES.
 1802. — EMERSON, WILLIAM.
 1803. — SULLIVAN, WILLIAM.
 1804. — DANFORTH, THOMAS.²
 1805. — DUTTON, WARREN.
 1806. — CHANNING, FRANCIS DANA.⁴
 1807. — THACHER, PETER.^{2, 5}
 1808. — RITCHIE, ANDREW, JUN.²
 1809. — TUDOR, WILLIAM, JUN.²
 1810. — TOWNSEND, ALEXANDER.
 1811. — SAVAGE, JAMES.²
 1812. — POLLARD, BENJAMIN.⁴
 1813. — LIVERMORE, EDWARD ST. LOE.

² Passed to a second edition.

³ Delivered another oration in 1826. Quincy's oration of 1798 was reprinted, also, in Philadelphia.

⁴ Not printed.

⁵ On February 26, 1811, Peter Thacher's name was changed to Peter Oxenbridge Thacher. (List of Persons whose Names have been Changed in Massachusetts, 1780-1892, p. 21.)

1814. — WHITWELL, BENJAMIN.
 1815. — SHAW, LEMUEL.
 1816. — SULLIVAN, GEORGE.²
 1817. — CHANNING, EDWARD TYRREL.
 1818. — GRAY, FRANCIS CALLEY.
 1819. — DEXTER, FRANKLIN.
 1820. — LYMAN, THEODORE, JUN.
 1821. — LORING, CHARLES GREELY.²
 1822. — GRAY, JOHN CHIPMAN.
 1823. — CURTIS, CHARLES PELHAM.²
 1824. — BASSETT, FRANCIS.
 1825. — SPRAGUE, CHARLES.⁶
 1826. — QUINCY, JOSIAH.⁷
 1827. — MASON, WILLIAM POWELL.
 1828. — SUMNER, BRADFORD.
 1829. — AUSTIN, JAMES TRECOTHICK.
 1830. — EVERETT, ALEXANDER HILL.
 1831. — PALFREY, JOHN GORHAM.
 1832. — QUINCY, JOSIAH, JUN.
 1833. — PRESCOTT, EDWARD GOLDSBOROUGH.
 1834. — FAY, RICHARD SULLIVAN.
 1835. — HILLARD, GEORGE STILLMAN.
 1836. — KINSMAN, HENRY WILLIS.
 1837. — CHAPMAN, JONATHAN.
 1838. — WINSLOW, HUBBARD. "The Means of the Perpetuity and Prosperity of our Republic."
 1839. — AUSTIN, IVERS JAMES.
 1840. — POWER, THOMAS.
 1841. — CURTIS, GEORGE TICKNOR.⁸ "The True Uses of American Revolutionary History."⁸
 1842. — MANN, HORACE.⁹

⁶ Six editions up to 1831. Reprinted also in his *Life and Letters*.

⁷ Reprinted in his *Municipal History of Boston*. See 1798.

⁸ Delivered another oration in 1862.

⁹ There are five or more editions; only one by the City.

1843. — ADAMS, CHARLES FRANCIS.
1844. — CHANDLER, PELEG WHITMAN. “The Morals of Freedom.”
1845. — SUMNER, CHARLES.¹⁰ “The True Grandeur of Nations.”
1846. — WEBSTER, FLETCHER.
1847. — CARY, THOMAS GREAVES.
1848. — GILES, JOEL. “Practical Liberty.”
1849. — GREENOUGH, WILLIAM WHITWELL. “The Conquering Republic.”
1850. — WHIPPLE, EDWIN PERCY.¹¹ “Washington and the Principles of the Revolution.”
1851. — RUSSELL, CHARLES THEODORE.
1852. — KING, THOMAS STARR.¹² “The Organization of Liberty on the Western Continent.”¹²
1853. — BIGELOW, TIMOTHY.¹³
1854. — STONE, ANDREW LEETE.² “The Struggles of American History.”
1855. — MINER, ALONZO AMES.
1856. — PARKER, EDWARD GRIFFIN. “The Lesson of '76 to the Men of '56.”
1857. — ALGER, WILLIAM ROUNSEVILLE.¹⁴ “The Genius and Posture of America.”
1858. — HOLMES, JOHN SOMERS.²
1859. — SUMNER, GEORGE.¹⁵
1860. — EVERETT, EDWARD.
1861. — PARSONS, THEOPHILUS.
1862. — CURTIS, GEORGE TICKNOR.⁸
1863. — HOLMES, OLIVER WENDELL.¹⁶
1864. — RUSSELL, THOMAS.

¹⁰ Passed through three editions in Boston and one in London, and was answered in a pamphlet, *Remarks upon an Oration delivered by Charles Sumner . . . July 4th, 1845.* By a Citizen of Boston. See *Memoir and Letters of Charles Sumner*, by Edward L. Pierce, vol. ii. 337-384.

¹¹ There is a second edition. (Boston: Ticknor, Reed & Fields. 1850. 49 pp. 12c.)

¹² First published by the City in 1892.

¹³ This and a number of the succeeding orations, up to 1861, contain the speeches, toasts, etc., of the City dinner usually given in Faneuil Hall on the Fourth of July.

- 1865.—MANNING, JACOB MERRILL. "Peace under Liberty."²
- 1866.—LOTHROP, SAMUEL KIRKLAND.
- 1867.—HEPWORTH, GEORGE HUGHES.
- 1868.—ELIOT, SAMUEL. "The Functions of a City."
- 1869.—MORTON, ELLIS WESLEY.
- 1870.—EVERETT, WILLIAM.
- 1871.—SARGENT, HORACE BINNEY.
- 1872.—ADAMS, CHARLES FRANCIS, JUN.
- 1873.—WARE, JOHN FOTHERGILL WATERHOUSE.
- 1874.—FROTHINGHAM, RICHARD.
- 1875.—CLARKE, JAMES FREEMAN. "Worth of Republican Institutions."
- 1876.—WINTHROP, ROBERT CHARLES.¹⁷
- 1877.—WARREN, WILLIAM WIRT.
- 1878.—HEALY, JOSEPH.
- 1879.—LODGE, HENRY CABOT.
- 1880.—SMITH, ROBERT DICKSON.¹⁸
- 1881.—WARREN, GEORGE WASHINGTON. "Our Republic—Liberty and Equality Founded on Law."
- 1882.—LONG, JOHN DAVIS.
- 1883.—CARPENTER, HENRY BERNARD. "American Character and Influence."
- 1884.—SHEPARD, HARVEY NEWTON.
- 1885.—GARGAN, THOMAS JOHN.

¹⁴ Probably four editions were printed in 1857. (Boston: Office Boston Daily Bee, 60 pp.) Not until November 22, 1864, was Mr. Alger asked by the City to furnish a copy for publication. He granted the request, and the first official edition (J. E. Farwell & Co., 1864, 53 pp.) was then issued. It lacks the interesting preface and appendix of the early editions.

¹⁵ There is another edition. (Boston: Ticknor & Fields, 1859, 69 pp.) A third (Boston: Rockwell & Churchill, 1882, 46 pp.) omits the dinner at Faneuil Hall, the correspondence and events of the celebration.

¹⁶ There is a preliminary edition of twelve copies. (J. E. Farwell & Co., 1863. (7), 71 pp.) It is "the first draft of the author's address, turned into larger, legible type, for the sole purpose of rendering easier its public delivery." It was done by "the liberality of the City Authorities," and is, typographically, the handsomest of these orations. This resulted in the large-paper 75-page edition, printed from the same type as the 71-page edition, but modified by the author. It is printed "by order of the Common Council." The regular edition is in 60 pp., octavo size.

- 1886.—WILLIAMS, GEORGE FREDERICK.
- 1887.—FITZGERALD, JOHN EDWARD.
- 1888.—DILLAWAY, WILLIAM EDWARD LOVELL.
- 1889.—SWIFT, JOHN LINDSAY.¹⁹ "The American Citizen."
- 1890.—PILLSBURY, ALBERT ENOCH. "Public Spirit."
- 1891.—QUINCY, JOSIAH.²⁰ "The Coming Peace."
- 1892.—MURPHY, JOHN ROBERT.
- 1893.—PUTNAM, HENRY WARE. "The Mission of Our People."
- 1894.—O'NEIL, JOSEPH HENRY.
- 1895.—BERLE, ADOLPH AUGUSTUS. "The Constitution and the Citizen."
- 1896.—FITZGERALD, JOHN FRANCIS.
- 1897.—HALE, EDWARD EVERETT. "The Contribution of Boston to American Independence."
- 1898.—O'CALLAGHAN, REV. DENIS.
- 1899.—MATTHEWS, NATHAN, JR. "Be Not Afraid of Greatness."
- 1900.—O'MEARA, STEPHEN. "Progress Through Conflict."
- 1901.—GUILD, CURTIS, JR. "Supremacy and its Conditions."
- 1902.—CONRY, JOSEPH A.
- 1903.—MEAD, EDWIN D. "The Principles of the Founders."
- 1904.—SULLIVAN, JOHN A. "Boston's Past and Present. What Will Its Future Be?"

¹⁷ There is a large paper edition of fifty copies printed from this type, and also an edition from the press of John Wilson & Son, 1876. 55 pp. 8°.

¹⁸ On Samuel Adams, a statue of whom, by Miss Anne Whitney, had just been completed for the City. A photograph of the statue is added.

¹⁹ Contains a bibliography of Boston Fourth of July orations, from 1783 to 1889, inclusive, compiled by Lindsay Swift, of the Boston Public Library.

²⁰ Reprinted by the American Peace Society.

- 1905.—COLT, LE BARON BRADFORD. "America's Solution of the Problem of Government."
- 1906.—COAKLEY, TIMOTHY WILFRED. "The American Race: Its Origin, the Fusion of Peoples; Its Aim, Fraternity."
- 1907.—HORTON, REV. EDWARD A. "Patriotism and the Republic."
- 1908.—HILL, ARTHUR DEHON. "The Revolution and a Problem of the Present."
- 1909.—SPRING, ARTHUR LANGDON. "The Growth of Patriotism."
- 1910.—WOLFF, JAMES HARRIS. "The Building of the Republic."
- 1911.—ELIOT, CHARLES W. "The Independence of 1776 and the Dependence of 1911."
- 1912.—PELLETIER, JOSEPH C. "Respect for the Law."

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Pelletier, J.

